

RESOLUTION NO.2004 -7

**RESOLUTION AUTHORIZING THE FIRST AMENDMENT TO SITE
PREPARATION AND DEVELOPMENT AGREEMENT- 4000 RED BANK ROAD
SITE**

WHEREAS, in the Agreement for the Creation of the Port of Greater Cincinnati Development Authority (the "Port Authority"), the City of Cincinnati, Ohio and the County of Hamilton, Ohio each determined that a basic responsibility of the Port Authority would be the identification, restoration and redevelopment of properties in Hamilton County affected or perceived to be affected by environmental contamination ("Brownfields Redevelopment"); and

WHEREAS, this Board has determined that it is necessary to amend the Site Preparation and Development Agreement – 4000 Red Bank Road Site; and

WHEREAS, This First Amendment to Site Preparation and Development Agreement – 4000 Red Bank Road Site (the "First Amendment"), is made this ____ day of March 2004, by and among the Port of Greater Cincinnati Development Authority ("Port"), the Village of Fairfax, Ohio ("Fairfax"), and Red Bank Road LLC ("Redeveloper"), and

WHEREAS, the application to the Clean Ohio Revitalization Fund ("CORF") referenced in the Agreement was made in 2003 and has been approved by the CORF; and

WHEREAS, due to the approval of CORF for said Site, the Redeveloper role in the improvement needs to be enhanced and it is in the best interest of the Port Authority; and

WHEREAS, all capitalized terms in this First Amendment not defined herein shall have the meanings specified in the Agreement;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Port of Greater Cincinnati Development Authority:

Section 1. The Port Authority staff are hereby authorized for and in the name of the Port Authority and on its behalf and on behalf of the Board, to enter into negotiations and an agreement with the Redeveloper to amend the Agreement as follows:

Add a new Section I.B.4 as follows:

"As used in this Agreement, (i) "Remediation Project Completion" shall mean completion of the Remediation Project as determined and evidenced by issuance of a No Further Action Letter as described in Section I.C.2(e) of this Agreement; and (ii)

“Remediation Project Completion Date” shall mean the date of issuance of such No Further Action Letter. Notwithstanding any conflicting provisions of this Agreement, if (i) Port receives and expends CORF grant monies to conduct the Remediation Project, and Remediation Project Completion is accomplished, and (ii) Redeveloper has not commenced (or caused to be commenced) construction on the Property of the Project (as more particularly described in Section I.B.1 of this Agreement), within 90 days after the Remediation Project Completion Date, then Redeveloper shall submit to Village and Port, within 120 days of the Remediation Project Completion Date, a revised Project plan for the review and approval of Village and Port, which approvals shall not be unreasonably withheld.”

The third and final sentence of Section I.C.1 of the Agreement is deleted, and there is substituted in its place the following:

“In the event any of the conditions have not been satisfied or waived on or before 365 days after the Remediation Project Completion Date, then Redeveloper may terminate this Agreement by written notice to all parties to this Agreement, and upon such termination the parties shall be relieved of all liability hereunder except to the extent set forth in Section I.B.3 hereof.”

Section 2. This Board finds and determines that all formal actions of this Board and any of its committees concerning and relating to the adoption of this Resolution was taken, and that all deliberations of this Board and of any of its committees that resulted in such formal action were held, in meetings open to the public, in compliance with the law.

Section 3. This Resolution shall be in full force and effect upon its adoption.

Adopted: March 11, 2004

Yeas: 14

Chairperson: _____

Nays: 0

Attest: _____

Secretary